

## Internal Revenue Service

Number: **201607003**

Release Date: 2/12/2016

Index Number: 355.03-00, 355.01-00,  
332.00-00, 361.02-00,  
305.03-00, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-116717-15

Date:

November 05, 2015

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

LLC 8 =

LLC 9 =

LLC 10 =

LLC 11 =

LLC 12 =

LP =

Business A =

Business B =

Business C =

State A =

State B =

State C =

Exchange =

Leases =

Franchise  
Agreements =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

Dear :

This letter responds to your authorized representatives' letter dated May 12, 2015, requesting rulings on certain Federal income tax consequences of a proposed transaction (the "Proposed Transaction"). The material information provided in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter and the rulings contained herein are issued pursuant to section 6.03 of Rev. Proc. 2015-1, 2015-1 I.R.B. 1, 17, regarding one or more significant issues under sections 332, 351, 355, and 368, and only address one or more discrete legal issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the Proposed Transaction described in this letter or as to any issue not specifically addressed by the rulings below.

### **SUMMARY OF FACTS**

Distributing, a State A corporation, is a widely held public company that is the common parent of an affiliated group that files a consolidated Federal income tax return (the "Distributing Group"). Distributing owns all of the stock of Sub 1 and Sub 5. Sub 1 owns all of the stock of Sub 2. Sub 2 owns all of the stock of Sub 3. Sub 3 owns all of the stock of Sub 4 and all of the interests of LLC 1, a State C limited liability company

that is treated as a disregarded entity for Federal income tax purposes (a “DRE”). Sub 5 owns all of the stock of Sub 6.

The Distributing Group is engaged through its direct and indirect subsidiaries in Business A, Business B, and Business C.

### **PROPOSED TRANSACTION**

In the Proposed Transaction, which has been partially consummated, Distributing will distribute Business B and Business C to its public shareholders. The relevant steps of the Proposed Transaction are set forth below:

- (i) On Date 1, Sub 2 formed Controlled, a State B corporation.
- (ii) On Date 2, Sub 2 formed LLC 2, a DRE.
- (iii) On Date 3, LLC 2 formed LLC 3, a DRE.
- (iv) Sub 5 will convert under the laws of State A into a single-member limited liability corporation (“LLC 4”) that will be treated as a DRE (a “Conversion”).
- (v) Sub 6 will convert under the laws of State A into a single-member limited liability company (“LLC 5”) that will be treated as a DRE (a “Conversion”; together with the Conversion in step (iv), the “Conversions”).
- (vi) Sub 3 will convert under the laws of State C into a single-member limited liability company (“LLC 6”) that will be treated as a DRE (the “Liquidation”).
- (vii) LLC 1 will form LLC 7, a DRE.
- (viii) LLC 6 will form LLC 8, a DRE.
- (ix) Sub 2 will form LLC 9, a DRE.
- (x) Sub 1 will form LLC 10, a DRE.
- (xi) LLC 5 will form LLC 11, a DRE, and distribute the interest in LLC 11 to LLC 4.
- (xii) LLC 1 will contribute certain assets related to Business B to LLC 7.
- (xiii) LLC 6 will contribute certain assets related to Business B to LLC 8.
- (xiv) Sub 2 will contribute certain assets related to Business B to LLC 9, including assets used in Business C.
- (xv) Sub 1 will contribute certain assets related to Business B to LLC 10.

- (xvi) LLC 4 will contribute certain assets related to Business B to LLC 11.
- (xvii) LLC 1 will distribute all of its interests in LLC 7 to LLC 6.
- (xviii) LLC 6 will distribute all of its interest in LLC 7 and LLC 8 to Sub 2.
- (xix) Sub 2 will contribute assets used in Business C to LLC 2, which will further contribute those Business C assets to LLC 3.
- (xx) Controlled will form LP, a DRE, and LLC 12, a DRE that will be the general partner of LP. Controlled will contribute all of its assets (other than its 100% interest in LLC 12) directly and through LLC 12 to LP.
- (xxi) Sub 2 will contribute all of its interests in LLC 2, LLC 7, LLC 8, and LLC 9 to Controlled in exchange for Controlled common stock (the "Controlled Common Stock") ("Contribution 1").
- (xxii) LP will borrow cash from third-party lenders (the "Borrowing").
- (xxiii) LP will distribute a portion of the proceeds of the Borrowing to Controlled.
- (xxiv) Sub 2 will distribute all of its Controlled stock to Sub 1 ("Internal Distribution 1").
- (xxv) Sub 1 will contribute all of its interests in LLC 10 and certain other subsidiaries to Controlled in exchange for Controlled Common Stock and the Cash Distribution (as defined below) ("Contribution 2").
- (xxvi) Controlled will distribute a portion of the proceeds of the Borrowing to Sub 1 (the "Cash Distribution").
- (xxvii) Sub 1 will distribute all its Controlled stock to Distributing ("Internal Distribution 2").
- (xxviii) Sub 1 will use the Cash Distribution to repay intercompany debt owed to Distributing or other members of the Distributing Group and/or make a distribution to Distributing. Other Distributing Group members will distribute any proceeds of the Cash Distribution to Distributing or use it to repay intercompany debt owed to Distributing. Distributing will use all of the proceeds of the Cash Distribution to repay or repurchase Distributing debt, whether long-term or ordinary course indebtedness, owed to unrelated persons, and whether existing at the time of the External Distribution (as defined below) or subsequently incurred in the ordinary course of business (which payments could include premium, interest and associated fees (such as consent fees), as well as principal), to pay dividends to holders of Distributing Common Stock, and/or to repurchase Distributing Common Stock, in all cases within c months of Contribution 3 (as defined below).

- (xxix) LLC 4 will distribute all of its interests in LLC 11 to Distributing.
- (xxx) LLC 4 and LLC 5 will each incorporate in State C as Sub 8 and Sub 9, respectively (the “Reincorporations”).
- (xxxi) Distributing will contribute all of its interests in LLC 11 to Controlled in exchange for Controlled Common Stock (“Contribution 3”).
- (xxxii) LP will enter into Leases with Distributing with respect to assets constituting Business B (other than the Business C assets).
- (xxxiii) Distributing and LLC 3 will enter into the Franchise Agreements for each property of Business C.
- (xxxiv) Distributing will distribute all of its Controlled stock to its shareholders in a pro rata distribution (the “External Distribution”).
- (xxxv) LLC 6 will distribute its interest in LLC 1 to Sub 2, which will contribute such interests to a newly formed entity that will be treated as a corporation (“Sub 7”) (“Contribution 4”).
- (xxxvi) Sub 2 will distribute all of its Sub 7 stock to Sub 1.
- (xxxvii) LLC 6 will contribute a portion of its assets to Sub 4 (“Contribution 5”).
- (xxxviii) LLC 6 will distribute all of its Sub 4 stock to Sub 2 and Sub 2 will distribute the Sub 4 stock to Sub 1.
- (xxxix) Controlled will elect to be subject to tax as a REIT as of the first day of its taxable year beginning Date 4 (the “REIT election”).
- (xl) LLC 2 will elect to be treated as a corporation for federal income tax purposes and will jointly elect with Controlled to be treated as a taxable REIT subsidiary of Controlled, both effective Date 4.
- (xli) Pursuant to its REIT election, Controlled will declare a dividend in an amount equal to its accumulated earnings and profits (“E&P”), as determined for federal income tax purposes, within the last three months of its first taxable year following the External Distribution, and distribute such amount to its shareholders no later than January 31st of the following year (the “Purging Distribution”). Controlled intends to make the Purging Distribution with a combination of cash and Controlled Common Stock. Controlled also currently intends to make other cash and stock distributions in the two years following the effective date of the REIT election (the “Other Distributions”; together with the Purging Distribution, the “REIT Distributions”) in order to comply with the distribution requirement of section 857(a)(1).

When Controlled makes the REIT Distributions, it intends to allow each Controlled shareholder to elect to receive such shareholder's distribution in either cash (the "Cash Option") or Controlled Common Stock of equivalent value (the "Stock Option"), subject to a limitation on the amount of cash to be distributed in the aggregate to all shareholders (the "Cash Limitation"). If a shareholder fails to make a valid election by the election deadline, that shareholder will be deemed to have made an election to be determined by Controlled at Controlled's sole discretion. To the extent necessary, Controlled will issue cash in lieu of fractional shares of stock. Although Controlled has not yet determined the amount of the Cash Limitation, it will not be less than a% of each REIT Distribution declaration (without regard to any cash that may be paid in lieu of fractional shares).

If the total number of shares for which an election is made to receive a distribution in cash would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limitation, then all shareholders electing to receive cash will receive cash on all such shares. On the other hand, if too many shareholders elect to receive cash, each shareholder electing to receive cash will receive a pro rata amount of cash corresponding to the shareholder's respective entitlement under the REIT Distribution declaration, but in no event will any shareholder electing to receive cash receives less than a% of the shareholder's distribution amount in cash.

The calculation of the number of shares to be received by any shareholder will be determined over a period of up to b weeks ending as close as practicable to the payment date of the relevant REIT Distribution, based on a formula using market prices that is designed to equate the value of the number of shares to be received with the amount of cash that could be received instead. The charter for Controlled will contain ownership limitations, and the stock distributed to a shareholder pursuant to each REIT Distribution will be subject to such ownership limitations.

## **REPRESENTATIONS**

- (a) At least d% of the assets of each of Sub 5 and Sub 6 will be held by Sub 8 and Sub 9, respectively, immediately after the Reincorporations.
- (b) Controlled intends to qualify as a REIT under the Code.
- (c) Controlled will regularly distribute its E&P as required by section 857(a)(1).
- (d) The Controlled Common Stock will be publically traded on Exchange, an established U.S. securities market.



- (e) Each REIT Distribution will be made by Controlled to its shareholders with respect to the Controlled Common Stock.
- (f) Controlled will report each REIT Distribution as a taxable dividend on all Forms 1099 that are distributed to holders of the Controlled Common Stock to the extent that the REIT Distributions are made out of Controlled's E&P or to the extent the REIT Distributions are otherwise subject to section 857(d)(2). Controlled will withhold any required portion of such dividend in accordance with applicable law. Each Form 1099 will reflect either distributions as capital gain dividends designated by Controlled or as a taxable dividend described above. Each such Form 1099 will reflect that the shareholder received an amount in the REIT Distribution equal to such shareholder's pro rata share of the REIT Distribution, in addition to other amounts distributed with respect to the relevant year.

### **RULINGS**

Based solely on the information submitted and the representations set forth above, and provided the relevant transactions otherwise qualify under sections 368(a)(1)(D) and 355, we rule as follows:

- (1) Contribution 1 (described in Step (xxi)), Contribution 4 (described in Step (xxxv)), and Contribution 5 (described in Step (xxxvii)) will not preclude the Liquidation (described in Step (vi)) from qualifying as a complete liquidation within the meaning of section 332.
- (2) The relative fair market value of the gross assets of Business C as compared to the fair market value of the gross assets of Controlled will not prevent Business C from qualifying as an active trade or business for purposes of section 355(b) with respect to Internal Distribution 1, Internal Distribution 2, and the External Distribution.
- (3) The use of the Cash Distribution in the manner described in Step (xxviii) will be treated as being distributed pursuant to the Internal Distribution 2 plan of reorganization under sections 361(b)(1) and 361(b)(3).
- (4) The Reincorporations will not preclude any of the Conversions from qualifying as reorganizations under section 368(a)(1)(C).
- (5) The distribution of cash and stock by Controlled to its shareholders (as described in Step (xli)) to effect a distribution of all of Controlled's E&P accumulated in taxable years prior to its REIT election, as well as cash and stock distributions in its first two taxable years as a REIT, will be treated as distributions of property with respect to Controlled's stock under section 301 by reason of section 305(b). The amount of any distribution of stock received by

any shareholder as part of the distributions will be considered to equal the amount of cash that the shareholder could have elected to receive instead.

### **CAVEATS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition no opinion is expressed or implied concerning whether Controlled otherwise qualifies as a REIT under part II of Subchapter M of Chapter 1 of the Code. Furthermore, this letter does not provide any rulings under sections 856 or 857. No opinion is expressed or implied as to whether any REIT Distribution will satisfy the distribution requirements of section 857(a)(1). Finally, no opinion is expressed or implied as to whether the Purging Distribution or any Other Distribution is to be considered preferential under section 562(c).

### **PROCEDURAL STATEMENTS**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

---

Mark J. Weiss  
Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)